IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT BENCH JAIPUR

O R D E R

Shri Lal Yadav 6 Vs. The State of Rajasthan & Another

(SB Civil Writ Petition No. 4692/98)

Date of Order : 1.11.2005

Hon'ble Mr. Justice KS Rathore

Mr. RN Mathur, for the petitioner.
Mr. BS Chhaba, Additional Govt Advocate.

Brief facts of the case are that the petitioner was appointed as Patwari on 7.9.68. He was placed under suspension vide order dated 13.10.87 on the ground that a departmental enquiry was contemplated against him.

The petitioner was served with the memorandum along with the charge sheet, statement of allegations for enquiry under Rule-16 of the CCA Rules, 1958.

The enquiry officer was appointed vide order dated 22.3.88 who submitted his report on 5.10.88. The Collector Ajmer vide his letter

dated 13.12.88 returned the enquiry file to the enquiry officer and the enquiry officer again issued fresh notice but the petitioner failed to appear on 21.10.89 therefore he proceeded ex parte and again submitted report to the competent authority. The disciplinary authority i.e. Collector vide his order dated 20.8.91 considering the enquiry report dismissed the petitioner from services ordering that the salary for the period of suspension and absence was not to be paid.

The petitioner preferred a departmental appeal through proper channel against the impugned order. The appellate authority after providing opportunity of being heard dismissed the appeal on 31.1.94 and thereafter the petitioner submitted application for review of the order dated 31.1.94 and the review petition also stand dismissed.

The review application under rule 34 of the CCA Rules submitted to His Excellency Governor of Rajasthan was also dismissed vide order dated 21.5.97.

The petitioner made another representation to the Secretary to His Excellency the Governor on 16.7.97 with the request to reconsider the review application but nothing was done.

Aggrieving and dissatisfying with the orders dated 20.8.91, 31.1.94, 21.5.97, 30.1.90, the present petition has been preferred on the ground that though the enquiry was initiated under rule 16 of CCA Rules for imposing major penalty but the respondent has not followed the procedure prescribed under rule 16 of the CCA Rules. Further, on the ground that opportunity of hearing was not provided to the petitioner and the enquiry was proceeded ex parte.

It is also submitted that Shri RN Meena issued a charge sheet to the petitioner as a Collector. Subsequently, he was promoted to the post of Divisional Commissioner and he

decided the appeal of the petitioner in the capacity of Divisional Commissioner. Shri RN Meena could not have decided the appeal of the petitioner as the same was based on the charge sheet issued by himself.

It is also alleged that looking to the charge sheet the punishment of dismissal is highly disproportionate.

Learned counsel for the petitioner in support of his submissions, placed reliance on the judgment rendered by Hon'ble the Supreme Court in the case of “Union of India & Others Vs. Mohd. Ramzan Khan” reported in (1991) 1 Supreme Court Cases 588 and the case of “V Ramana Vs A.P. SRTC And Others” reported in (2005) 7 Supreme Court Cases 338.

Per contra, learned counsel for the respondent submitted that the notice was duly issued and served upon the petitioner but the petitioner did not participate the enquiry proceedings and only then the ex parte proceedings were initiated. The petitioner

through letter/notice dated 7.9.90 was duly informed to appear before the competent authority on 12.10.90 and in this letter it was specifically mentioned that in case he remains absent then it will be presumed that the petitioner does not want to say anything in the matter and proper order shall be passed thereafter. And notice was served to the petitioner on 22.9.90 through the Tehsildar, Tehsil Hurda, District Bhilwara on 12.10.90. The next date was fixed 9.11.90 and on the order sheet, the signature of the petitioner was obtained. Thereafter, the matter was posted for 30.11.90, 21.12.90 and 23.11.91 and on all these dates, the signatures of the petitioner were obtained. On 23.1.91 due to fair of 'Urse', the next dated 15.3.91 was fixed and on 15.3.91 the next date 26.4.91 was fixed and on these dates also the signatures of the petitioner were taken.

On 26.4.91, the petitioner remained absent and the matter was posted for 31.5.91 and the

date 31.5.91 was informed by the respondents vide letter/notice dated 1.5.91 and this notice was served upon the petitioner by the Tehsildar, Tehsil Hurda (Bhilwara) on 28.5.91. The petitioner appeared on 31.5.91 and after hearing, the petitioner was granted one week's time for filing his reply. This shows that ample opportunity was afforded to the petitioner and for all these dates the petitioner was duly informed. It is wrong to say that ex parte proceeding was drawn against the petitioner without providing opportunity of being heard. On the contrary, last opportunity of filing of reply was given to the petitioner and it was directed that if the reply is not filed then the reply already filed will be considered and decision will be taken as per law. On 6.6.91, the petitioner informed through Inland letter that he is not feeling well and after recovering his health, he will file reply.

Having considered the rival submission of

the respective parties, so far the ex parte proceeding against the petitioner is concerned, I am not convinced with the submission made on behalf of the petitioner as the respondent is able to show that ample opportunity on various dates has been given and the petitioner was present on the dates fixed and despite of knowing the fact about the date the petitioner deliberately not appeared before the authority therefore, the enquiry which was conducted by the enquiry officer cannot said to be in violation of the provisions of law. And, so far order passed by the disciplinary authority is concerned, the disciplinary authority on the basis of the report submitted by the enquiry officer and on the basis of the material available on the record, after opportunity of being heard to the petitioner has passed the punishment order.

Now the question remains whether the Disciplinary Authority Shri RN Meena who was Collector Ajmer at the relevant point of time

and passed the order of dismissal against the petitioner, could hear and decide the appeal of the petitioner as the Divisional Commissioner ? I am of the view that Shri RN Meena committed wrong in confirming the order earlier passed by himself. Thus, in the interest of justice, I deem it proper to quash and set aside the appellate authority order dated 31.1.94 passed by the Division Commissioner and the order dated 21.5.97 passed by the reviewing authority and the matter is remanded back to the appellate authority to hear the matter afresh and pass the order after providing opportunity of being heard to the petitioner. But, in any case, I do not want to interfere with the order passed by the disciplinary authority. However, as the matter is old enough, the appellate authority is expected to decide the appeal expeditiously.

The writ petition stands partly allowed.

(KS RATHORE), J.

SB Civil Writ Petition No. 3756/94
Udaiveer Singh Vs. State of Rajasthan & Another

10/11/2006

Hon'ble Mr. Justice KS Rathore

Mr. Sandeep Saxena, for the petitioner.
Mr. BS Chhaba, Additional Govt. Advocate.
Mr. VK Mathur, for the respondent.

The petitioner is claiming promotion on the post of A.C.F. against the quota of 1993-94 and 1994-95 which was not given to him in view of the punishment awarded by the disciplinary authority.

It is given out by the learned counsel for the petitioner that subsequently in the year 1996, the petitioner has been exonerated by the appellate authority and thus, he is entitled to be considered for the vacancy of the year 1993-94 and 1994-95.

Learned counsel for the respondent State submits at the Bar that vide order dated 22nd May, 1997, the petitioner was promoted on the post of Assistant Conservator of Forest against the vacancy of year 1996-97. In view of this concession, the relief claimed by the petitioner stands fulfilled.

Accordingly, the writ petition stands disposed of.

However, in the interest of justice, it is observed that after exoneration, the petitioner has fresh cause of action and to this effect, the petitioner can represent before the respondents.

(KS RATHORE), J.